



FILED ELECTRONICALLY

February 5, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12 Street, SW
Washington, DC 20554

**Re: CC Docket No. 04-440 – Verizon Petition for Forbearance from Title II
and Computer Inquiry Rules with Respect to Broadband Services**

Dear Ms. Dortch

Continuing my filing of February 1, 2005, I have some additional observations on Verizon's petition for forbearance (04-440), which should be refused for the following additional reasons:

- 1) Verizon response to 04-405 by William H. Johnson on 1/28/2005 states the following to support their request for forbearance on page 12.
"Several Colleges and Universities requested Verizon provide DSL capabilities to their students and offices, and the schools would market these services to their students. As this arrangement would provide Verizon with additional customers at lower customer acquisition costs, the academic institutions expected a reduced price. As the provision of such a service would likely require Verizon to establish new tariffs for each such offering... Verizon was concerned that filing such tariffs would obligate it to provide services in locations in which it would otherwise choose not to do so."

In this statement, Verizon makes the case for us. Verizon does not choose to provide certain services based on their own needs, not those of their customers. ISPs such as BerkshireNet have long provided services to areas of the country underserved by the ILEC – and by the granting of forbearance will return things to the previous status quo.

Independent ISPs would not turn their noses up to such a request from a college or university – in fact they would jump at such an opportunity. The small or medium sized ISP works with their customers to reach a mutually

beneficial arrangement, wherein both sides would receive what they needed.

- 2) On page 14 of the same document, Verizon states “ILECs will continue to face strong incentives to offer wholesale services to independent ISPs and to provide consumers full access to the Internet even in the absence of common carrier regulations.”

Verizon currently abuses the common carrier regulations on a regular basis. Current rules require Verizon DSL be provided only over Verizon local services. Many reports have been received from other ISPs that potential DSL customers of the ISP, when the customer is not with Verizon, are sent to Verizon to get local telephone service. At that time, the order taker at Verizon attempts to convince the ISP's potential customer to change ISPs to Verizon Online.

This practice totally ignores the Cross Subsidization statutes of Computer III. This anticompetitive practice, engaged in by all the Bell Operating Companies shows that Verizon's “strong incentives to offer wholesale services to independent ISPs” are not strong. They show, on the other hand that the rules of the FCC mean nothing to them and that they will continue to take each ruling the FCC makes and push them to the limit to remove any competitive obstacles to owning the Internet – an Internet they had little to do with creating and little to do with promoting.

- 3) Verizon continues to practice predatory pricing along with their cross subsidization practices. Verizon offers customers who purchase Local, Long-Distance and DSL from them a price for DSL significantly lower than that offered to unaffiliated ISPs – as much as a dollar or two less. Added to that, Verizon often offers free hardware.

At the same time, while the DSL resellers must purchase the DSL circuit from Verizon for more than Verizon sells at retail, the reseller must purchase on top of the Verizon DSL, transport from the Verizon Central Office to the ISP's Central Office, bandwidth to the Internet, run email servers, provide customer support – the list goes on. With the current practices, there is little or no chance for the ISP to reach the residential market – a price sensitive market – and poor options in the commercial market.

- 4) Verizon also provides poorer service to independent ISPs than to their own affiliated ISPs as far as repair services are concerned. Verizon Online DSL services are well known within the unaffiliated ISP community to receive first attention to the detriment of independent ISPs should an outage occur.

Verizon's statements that forbearance will have negligible impact on unaffiliated ISPs are belied by current actions of the ILEC itself. Because of the current actions of Verizon, small local ISPs have found that they currently rely on clients who value supporting local businesses and the quality of service that they provide more than they value money. This is not much of a business plan. With the active enforcement of Computer II and III rules, the playing field will be leveled, and competitive forces will take over. This was the intention of the Telecommunications Reform Act of 1996 – an act which has failed more due to failure to enforce than to the design of the act.

Please refuse the Petitioner's request for forbearance.

Sincerely,

Michael D. Bathrick
President
BerkshireNet, Inc.